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District of Hawaii

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BY THE ORDER OF THE COURT

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UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII
Jan 30, 2020
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Attorneys for Plaintiff
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)	MAG. NO. 20- 00109 KJM
)	
Plaintiff,)	CRIMINAL COMPLAINT;
)	AFFIDAVIT IN SUPPORT OF
v.)	CRIMINAL COMPLAINT
)	
HENRY ANTHONY LUBERTS,)	
)	
Defendant.)	
_____)	

CRIMINAL COMPLAINT

I, the undersigned complainant, being duly sworn, state the following is true
and correct to the best of my knowledge and belief.


Possession of Firearms and Ammunition
While Subject to Protective Order
(18 U.S.C. § 922(g)(8))

From a precise date unknown, but by at least January 29, 2020, within the District of Hawaii, HENRY ANTHONY LUBERTS, the defendant, while subject to a Protective Order issued by the Family Court of the First Circuit in the State of Hawaii, after a hearing of which LUBERTS did receive actual notice and did have an opportunity to participate, and which explicitly enjoined LUBERTS from threatening or physically abusing an intimate partner, did knowingly possess firearms, namely, (1) a .30 caliber Smith and Wesson model 60 revolver bearing serial number AES1686; (2) a .25 caliber Bantam Beretta Min pistol bearing serial number 94652A; (3) a .25 caliber Czech pistol bearing serial number 70109; (4) a .25 caliber Mauser Werke pistol bearing serial number 235652; (5) a .375 caliber Winchester lever action, Ballard rifle, model 42 Glenfield, Goose gun, bearing serial number 20066821; (6) a .35 caliber black colored Fabrique National pistol, bearing serial number 91088, an AR-7 Explorer rifle, bearing serial number A221499; (7) an unknown caliber CMC tan colored zip gun, bearing serial number 12096C; and numerous ammunition cartridges and casings, at least one of which firearms and all of which ammunition had been previously shipped and transported in interstate commerce.

All in violation of Title 18, United States Code, Section 922(g)(8).

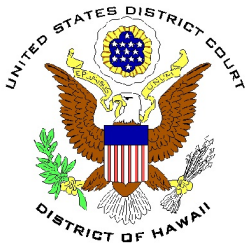
I further state that I am a Task Force Officer with Homeland Security Investigations ("HSI") and that this Complaint is based upon the facts set forth in the attached "Affidavit in Support of Criminal Complaint", incorporated herein by reference.


DATED: January 30, 2020, at Honolulu, Hawaii.


CLINT IGE
Task Force Officer, HSI

This Criminal Complaint and Affidavit in support thereof were presented to, approved by, and probable cause to believe that the defendant above-named committed the charged crime found to exist by the undersigned Judicial Officer at 12:45 p.m. on January 30, 2020.

Sworn to under oath before me telephonically, and attestation acknowledged pursuant to Federal Rule of Criminal Procedure 4.1(b)(2), on this 30th day of January, 2020, at Honolulu, Hawaii.




Kenneth J. Mansfield
United States Magistrate Judge

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

CLINT IGE, being duly sworn, deposes and states as follows:

1. I am a Task Force Officer with Homeland Security Investigations (“HSI”) and am also a Detective with the Honolulu Police Department (“HPD”). The information contained in this affidavit is based on my personal knowledge and my training and experience, information obtained from other law enforcement personnel, and witnesses. This affidavit is intended merely to show that there is probable cause for the requested arrest warrant and does not set forth all of my knowledge about this matter.

The Defendant

2. Based on HPD checks, it has been determined that HENRY ANTHONY LUBERTS, the defendant (hereinafter “LUBERTS”) was a sworn HPD Officer from December 15, 1983, until October 8, 1998.

3. As a former HPD Officer, there is probable cause to believe that LUBERTS has extensive training, knowledge, and experience in regards to firearm manipulation as well as Hawaii State laws pertaining to the proper registration and disposal of firearms.

The Temporary Restraining Order and the Registered Firearms

4. On August 7, 2019, an adult female (“AF1”) obtained a Temporary Restraining Order (“TRO”) against her ex-boyfriend, LUBERTS. The TRO was

granted by the Honorable Judge Jesse L.K. HALL, of the Family Court of the First Circuit, State of Hawaii, under FC-DA # 19-1-1786, with an expiration date of February 3, 2020.

5. A firearms check was conducted, via the HPD Firearms Section, and it was determined that LUBERTS is the current registered owner of six separate firearms described as follows: (a) a 0.30 caliber American Smith and Wesson model 60 revolver bearing serial number AES1686, (b) a 0.25 caliber Bantam Beretta, Brigadier, Empire, Fllt Pieta, Jaguar, Min pistol bearing serial number 94652A, (c) a 0.25 caliber Czech pistol bearing serial number 70109, (d) a 0.25 caliber Mauser Werke pistol bearing serial number 235652, (e) a 0.22 caliber Standard King pistol bearing serial number ML35976, and (f) a 300 mag Winchester M70 rifle bearing serial number G1816628.

6. On August 8, 2019, at about 7:30 p.m., HPD Officer Keola KOPA (hereinafter “Officer KOPA”) served LUBERTS the TRO at his residence in Kailua, Hawaii (hereinafter the “Subject Premises”). LUBERTS acknowledged the TRO and signed a proof of service, but declined to allow HPD to search his residence for any firearms. Although LUBERTS verbally admitted that he has six firearms registered to him, he claimed that the firearms had been damaged by rain about four or five years earlier. LUBERTS also verbally claimed that he had given the firearms to a friend, whom he did not want to identify, to repair and that he no

longer had access to any firearms. LUBERTS also prepared a written statement, in which he claimed that his firearms were destroyed as a result of weather damage about four or five years earlier, that he no longer had access to any firearms, and that he did not want to give HPD Officers consent to search his residence.

7. LUBERTS's verbal and written statements appear to have been an attempt to mislead Officer KOPA for at least the following reasons: (a) a reasonable person would not make an effort to repair damaged firearms without the expectation of receiving them back in a functional condition in an effort to either sell or possess them; (b) LUBERTS claimed that his firearms were damaged four or five years earlier, but, as explained in more detail below, AF1 had stated that she witnessed firearms in his possession in July of 2019; (c) a reasonable person, to include formerly sworn HPD Officers such as LUBERTS, would properly dispose of firearms that are inoperable via HPD, in order to legally unregister them; and (c) a reasonable person would maintain their registered firearms within their personal residence for safekeeping, or would unregister them within a reasonable amount of time after no longer having them in their possession.

The Protective Order

8. On August 13, 2019, HPD Officers responded to a residence in Kaneohe, Hawaii, on a suspicious circumstances type case. The homeowner ("AF2") related that LUBERTS was at her residence looking for KAPU. HPD

Officer Sean P. COSTIGAN responded to the scene, determined that no TRO violations had occurred and LUBERTS voluntarily left the scene.

9. On September 13, 2019, HPD Officers responded to the Waianae Mall, located in Waianae, Hawaii, on a Protective Order Violation case. AF1 related that at about 2:08 p.m., that same day, she was at an unscheduled doctor's appointment in Kaneohe, Hawaii. Shortly after leaving, AF1 was informed by hospital staff members that LUBERTS called the Castle Professional Center and requested for AF1's doctor's name and location.

10. At about 3:09 p.m., that same day, hospital staff member informed AF1 that LUBERTS went to the Straub Medical Center and demanded to know what exam room she was in and who her doctor was. AF1 related that she has not had contact with LUBERTS since July 16, 2019 and that LUBERTS has no legal right to any of her medical information.

11. AF1 related that she saw LUBERTS in possession of firearms on July 16, 2019, at the Subject Premises, and that the firearms, including silencers and ammunition, are hidden strategically throughout the Subject Premises. AF1 also stated that LUBERTS is known to sleep with a firearm under his pillow, that LUBERTS may have placed wire traps within the Subject Premises and that LUBERTS cleans and maintains his firearms on a daily basis. HPD Officer Kelly

M. FOSNAUGH responded to the scene and documented this incident under HPD report number 19-347893, Harassment by Stalking.

12. On September 17, 2019, the Honorable Judge Salina K. ALTHOF, of the Family Court of the First Circuit, State of Hawaii granted KAPU with an Order for Protection, under FC-DA # 19-1-1786, against the respondent, LUBERTS, which expires on September 17, 2049. The order was served in open court, with LUBERTS present and represented by counsel and with an opportunity to be heard, witnessed by Family Court Officer Melinda J. MEURER, and documented as a follow up under HPD report number 19-297242; Initial Protective Order.

13. The Protective Order, which LUBERTS acknowledged, provides, pursuant to H.R.S. section 134-7(f), that LUBERTS, and/or anyone acting on his behalf, are prohibited from possessing, controlling, or transferring ownership of any firearm, ammunition, or firearm permit or license for the duration of this order or extension thereof and that all firearms permits or licenses are revoked. The Protective Order further provides that LUBERTS shall immediately turn over all firearms, ammunition, permits and/or licenses to a police officer or to the HPD for the duration of the order.

14. Between December 2, 2019, and January 2, 2020, HPD Officers responded to the Subject Premises on service type calls on almost a daily basis. On each service call, each of which was documented under HPD report numbers,

LUBERTS claimed that unknown persons, to include AF1, would unlawfully enter his property and disappear upon HPD arrival. Numerous HPD Officers noted that LUBERTS appeared to be suffering from a medical condition to include auditory and visual hallucinations.

15. Amongst the many calls for service that HPD responded to at the Subject Premises, LUBERTS was observed in possession of an aluminum baseball bat and a screwdriver while speaking to HPD Officers. On one occasion, that occurred on December 7, 2019, LUBERTS was transported to the Castle Medical Center for mental observation under the direction of an HPD Police Psychologist. The incident was documented under HPD report number 19-464313; MH-1.

16. On December 26, 2019, following the MH-1 incident, HPD Officer Regina B. HAN (hereinafter “Officer HAN”), who is currently assigned to the HPD Records/Firearms Section, was assigned to follow up on the recovery of LUBERTS firearms due to his mental health history and stipulations of a valid Order for Protection (FC-DA # 19-1-1786). Officer HAN ascertained LUBERTS’s last known address (the Subject Premises) and confirmed that there was no record that the six firearms, registered to him, had ever been surrendered.

17. On December 26, 2019, a certified letter was sent to the Subject Premises. The letter detailed the reasons for LUBERTS’s disqualification of firearm ownership and possession and instructed LUBERTS to surrender all

firearms and ammunition to the Chief of Police and/or dispose of firearms and ammunition as outlined in H.R.S. 134-7.3; Seizure of Firearms Upon Disqualification. This letter was assigned a United States Postal Service tracking number of 7016 3010 0000 0382 1983 and was time stamped as “delivered, left with individual” on December 30, 2019 at about 1:07 p.m.

18. Status checks of LUBERTS’s registered firearms were continuously made via numerous online database searches to include, but not limited to, the HPD Case Reporting System (CRS), the HPD Firearms Database, the Criminal Justice Information System (CJIS) and the National Crime Information Center (NCIC). Physical checks were also made with the HPD Evidence Custodians to verify if LUBERTS registered firearms had been surrendered. All of the aforementioned firearms checks were met with negative results and reflected LUBERTS as the current registered owner. Officer HAN, who is an authorized representative and custodian of records for the HPD Firearms Section, which issues and maintains firearm registrations and permit records, documented this incident under HPD report number 20-003722; Person in Possession of a Firearm-Fugitive from Justice or Under Indictment.

19. On January 6, 2020, HPD Detective Lauren PORTER (hereinafter “Det. PORTER”) was assigned to investigate the aforementioned firearms case and

attempted to contact LUBERTS on several occasions but was met with negative results.

20. On January 10, 2020, Det. PORTER verified, via the City and County of Honolulu Tax Map Key, that the Subject Premises is owned by LUBERTS and a second person.

21. On January 12, 2020, Det. PORTER conducted a physical check of the Subject Premises and observed two vehicles parked in the open driveway area of the residence. The first vehicle was a brown colored 1997 Chevrolet van, bearing Hawaii license plates ending in 204 (hereinafter "Subject Vehicle #1"). The second vehicle was a white colored Nissan Maxima, bearing Hawaii license plates ending in 986 (hereinafter "Subject Vehicle #2"). Checks revealed that both vehicles were registered to Henry LUBERTS with an address at the Subject Premises.

22. On January 24, 2020, Det. PORTER obtained a Warrant of Arrest for LUBERTS for the offense of Ownership or Possession Prohibited in violation of H.R.S. section 134-7(f) and State of Hawaii search warrants for the Subject Premises and Subject Vehicles #1 and #2 which were signed by the Honorable Judge Hilary B. GANGNES of the District Court of the First Circuit, Honolulu Division, State of Hawaii.

23. On January 29, 2020, at about 9:10a.m., HPD Officers located LUBERTS at an address in Kailua, Hawaii and placed him under arrest for Ownership or Possession Prohibited (H.R.S.134-7) documented under HPD report number 20-003722.

24. On January 29, 2020, at about 1:00 p.m., HPD Officers executed the Search Warrant for the Subject Premises and located the following items in Unit B and submitted them into HPD Evidence under HPD report number 20-003722:

- a. A semi-automatic .25 caliber Czech pistol, bearing serial number 70109 (Item #1), registered to LUBERTS.
- b. A semi-automatic .25 caliber Mauser Werke pistol, bearing serial number 235652 (Item #2) registered to LUBERTS.
- c. A .25 caliber Bantam Beretta, Brigadier, Empire, Flt Pieta, Jaguar Min pistol, bearing serial number 94652A (Item #3) registered to LUBERTS.
- d. An unknown caliber CMC tan colored zip gun, bearing serial number 12096C (Item #4), unregistered.
- e. A black colored AR-7 Explorer rifle, bearing serial number A221499 (Item #5), unregistered.
- f. A .35 caliber black colored Fabrique National pistol, bearing serial number 91088 (Item #7) with one (1) unloaded magazine, registered to

someone other than LUBERTS. Per the HPD Case Reporting System (CRS), Item #7 was not reported stolen.

g. A .375 caliber Winchester lever action, Ballard rifle, model 42 Glenfield, Goose gun, bearing serial number 20066821 (Item #8), registered to J & S Enterprises. Per the HPD CRS, Item #8 was not reported stolen.

h. A black colored metallic cylindrical tube, resembling, but not confirmed to be a suppressor (Item #9).

i. A black colored metallic cylindrical tube, resembling, but not confirmed to be a suppressor (Item #10).

j. Two (2) Federal 12 gauge shotgun cartridges (Item #16).

k. Seventy-four (74) Winchester 9mm cartridges (Item #17).

l. Fifteen (15) unknown brand 12 gauge shotgun cartridges (Item #18).

m. Twenty (20) unknown brand 39mm cartridges (Item #19).

n. Twenty-two (22) unknown brand .25 caliber cartridges (Item #20).

o. Four-hundred five (405) unknown brand .22 caliber cartridges (Item #21).

p. Three-hundred (300) .22 caliber Aguila cartridges (Item #22).

- q. Thirty-four (34) unknown brand metal ammunition slugs (Item #23).
- r. Seven (7) unknown brand 300 caliber casings (Item #24).
- s. Ten (10) unknown brand, unknown caliber cartridges (Item #25).
- t. Seven (7) unknown brand 30-06 caliber cartridges (Item #26).
- u. Five (5) Winchester 375 cartridges (Item #27).

25. On January 29, 2020, HPD Officers continued with the execution of the Search Warrant of the Subject Premises and located the following items in Unit B-1 and submitted the into HPD Evidence under HPD report number 20-003722:

- a. A silver colored .38 caliber Smith and Wesson revolver handgun, bearing serial number AES1686 (Item #6), registered to LUBERTS.
- b. Five (5) unknown brand .38 caliber cartridges (Item #11).
- c. Five-hundred (500) unknown brand .22 caliber cartridges (Item #12).
- d. Sixteen (16) unknown 9mm cartridges (Item #13).
- e. Eleven (11) unknown brand .38 caliber cartridges (Item #14).
- f. One (1) unloaded Smith and Wesson 5906 magazine (Item #15).

g. One-thousand two-hundred fifty (1250) Winchester .22 caliber cartridges (Item #28).

26. On January 29, 2020, HPD Officers executed the Search Warrant for Subject Vehicles #1 and #2 but were met with negative results.

27. On January 29, 2020, at about 5:30 p.m., Det. PORTER placed LUBERTS under arrest for Permits to Acquire (H.R.S. 134-2) and Transfer, Possession of Firearms (H.R.S. 134-4) documented under HPD report numbers 20-038092-002 and 20-038092-003.

28. As of this writing, four of the six firearms that are currently registered to LUBERTS, an additional four firearms that are not currently registered to LUBERTS and numerous ammunition cartridges and casings have been recovered at the Subject Premises.

29. On January 29, 2020, at about 8:22 p.m., HPD Detective Douglas LEE and your affiant informed LUBERTS of his Constitutional Rights in accordance to form HPD-81. LUBERTS related that he understood his rights and elected to have an attorney present prior to providing a statement.

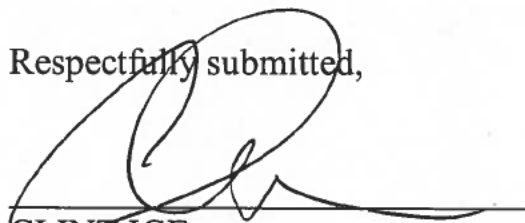
30. An ATF Interstate Nexus Special Agent has examined the silver colored .38 caliber Smith and Wesson revolver handgun, bearing serial number AES1686 (Item #6), registered to LUBERTS, described above and determined that this type of firearms is only manufactured outside the State of Hawaii. In light of

that determination, the firearm must have traveled in interstate or foreign commerce prior to being possessed in Hawaii. The ATF Interstate Nexus Special Agent also confirmed that the various types of ammunition recovered during the execution of the search warrants are of types only manufactured outside the State of Hawaii.

CONCLUSION

31. Based on the foregoing facts, I respectfully submit that probable cause exists to believe that HENRY ANTHONY LUBERTS, the defendant, committed the aforementioned offenses.

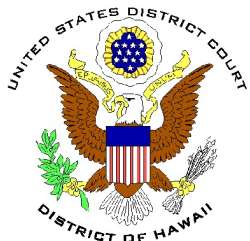
Respectfully submitted,


CLINT IGE

Task Force Officer, HSI

This Criminal Complaint and Affidavit in support thereof were presented to, approved by, and probable cause to believe that the defendant above-named committed the charged crime found to exist by the undersigned Judicial Officer at 12:45 p.m. on January 30, 2020.

Sworn to under oath before me telephonically, and attestation acknowledged pursuant to Federal Rule of Criminal Procedure 4.1(b)(2), on this 30th day of January, 2020, at Honolulu, Hawaii.



Kenneth J. Mansfield
United States Magistrate Judge